

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 02-0450  
ADJUSTED GROSS INCOME TAX PENALTY  
For Year 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Adjusted Gross Income Tax – Penalty Waiver**

**Authority:** IC 6-8.1-10-2.1; 45 IAC15-11-2

Taxpayer protests the assessment of penalty related to an audit assessment.

**STATEMENT OF FACTS**

Taxpayer was assessed adjusted gross income tax as a result of a department audit. The audit was hindered by taxpayer's poor records and taxpayer's refusal to sign for an extension of time for the auditor to complete the audit. As a result of these factors, the auditor prepared a best information available estimate of taxpayer's liability. Taxpayer then requested and cooperated on a supplemental audit that reduced the original assessment, but included a penalty based on taxpayer's poor records and errors in its preparation of its Indiana return. Taxpayer paid the assessment but protested the penalty assessment.

**I. Adjusted Gross Income Tax – Penalty Waiver**

**DISCUSSION**

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall

be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer argues that the penalty should be waived because the company's deficiency was due to reasonable cause and not due to willful neglect. The original audit resulted in a best information available estimate of taxes due because of taxpayer's poor records. The supplemental audit concluded that most of the remaining assessment arose from poor records and errors in taxpayer's preparation of their original returns. Taxpayer has not demonstrated ordinary business care and prudence in carrying out its duties.

### **FINDINGS**

The taxpayer's protest is denied.